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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604

NOV 23 2004

REPLY TO THE ATTENTION OF: S-6J

John M. Dwyer, Executive Vice President
KEMRON Environmental Services, Inc.
1359-A Ellsworth Industrial Boulevard
Atlanta, GA 30316

Re: Your letter of October 26, 2004
CERCLA Cleanup Effort at Ft. Sheridan, IL

Dear Mr. Dwyer:

Thank you for your letter of October 26, 2004, in which you allege financial harm to your company as a result of statements made by one of our Remedial Project Managers.

Owen Thompson was assigned to Ft. Sheridan on March 6, 1995, replacing the previous RPM, Gary Schafer. In the years when the Army had a full-time BRAC Environmental Coordinator (BEC) at Ft. Sheridan, we think that significant progress was made in achieving U.S. Environmental Protection Agency (U.S. EPA) and Navy property transfer and site closure objectives. We often look back to Ft. Sheridan as one of our BRAC success stories.

Mr. Thompson continued to serve as the U.S. EPA RPM at Ft. Sheridan until the Army terminated U.S. EPA resources at the end of September 2003.

Your letter was prompted by stories originating from an August 23, 2004, Air Force Real Property Agency (AFRPA) meeting held at the Columbus Regional Airport Authority offices at Rickenbacker International Airport, Columbus, Ohio. U.S. EPA receives resources from the Air Force for participating in BRAC Cleanup Teams (BCTs) at three former Ohio Air Force bases. Mr. Thompson is the U.S. EPA RPM for the former Rickenbacker Air National Guard Base, and the former Newark Air Force Base. AFRPA asked Mr. Thompson to attend the meeting in order to solicit agency opinion about Air Force plans to privatize the remaining cleanup work at the Ohio bases. The former BECs for all three Ohio sites were RIFed at the end of FFY '04, and BEC responsibilities were transferred to a single person at AFRPA Headquarters in Arlington, VA. Since there are organizational similarities to the Ft. Sheridan experience, AFRPA expressed an interest in getting our input before it scoped its new contracts.

Mr. Thompson objects to your characterization of his comments at the AFRPA meeting. He claims that any comments he provided were offered productively and in the spirit of improving AFRPA's site closure objectives. The Administrative Record clearly shows that U.S. EPA has never questioned

KEMRON's performance at Ft. Sheridan. We have always maintained that if any "corners were cut" at Ft. Sheridan, it was due to the way the Army structured its contracts, the ambiguous way it defined its closure objectives, and methods used to carry out its oversight responsibilities. Mr. Thompson asserts that any comments he provided at the Columbus scoping meeting were consistent with comments previously provided to the Army by U.S. EPA.

Your letter states that the story came by way of an employee of the Army Environmental Center. No one from the Army was present at the Columbus meeting. The Agency has had ongoing discussions and continuing professional disagreements with AEC for many years about how performance based contracting (PBC) should be structured.

Comments were provided at the AFRPA meeting in the hope that certain structural and oversight issues could be avoided as it implemented its new version of performance-based contracting. I agree with you that it's not fair for KEMRON to be blamed by "inference" for any disagreements the Agency might have with the Army about GFPR at Ft. Sheridan. In the scope of their employment, however, our RPMs have a duty and responsibility to the public to speak up if they think there's a better way to do things. AFRPA staff are free to take or leave our comments as they see fit.

It's interesting to note that Mr. Thompson and one of our Section Chiefs were former KEMRON employees about 20 years ago (in a predecessor company). Mr. Thompson claims that he was fortunate to have worked with many fine people there who he continues to know and respect. Mr. Thompson points out that it's just not in his personal interest to say anything bad about where he used to work. At one of his current sites, the Former Chantute AFB, Mr. Thompson has noted to the Air Force that KEMRON continues to do excellent lab work.

You have made many allegations and comments in your letter that deserve response. For ease of reference, I have numbered the major points made in your letter:

1. *"Throughout the performance period of this contract, without regard to the contract performance, Mr. Thompson has expressed very vocal skepticism and criticism relating to the contract mechanism (GFPR) and the work being performed by KEMRON."*

U.S. EPA considers the Army entirely responsible for the BRAC cleanup at Ft. Sheridan. These responsibilities cannot be contracted away to KEMRON. Our comments on the record are clear that the reason that U.S. EPA and Navy cleanup objectives have not been met is because the Army did not include them as a contractual GFPR requirement. U.S. EPA is not a party to the GFPR contract, and has no legal basis to render an opinion on GFPR contract performance. U.S. EPA has never been provided with a copy of the contract. We have every reason to believe that KEMRON has met all GFPR contract objectives.

2. *"Mr. Thompson has stated that he felt the contract was nothing more than a license for the contractor to cut corners and to minimize efforts to enhance profit, although there was no evidence to support this theory".*

Mr. Thompson does not recall making this statement about KEMRON's performance at Ft. Sheridan.

3. *"He has accused KEMRON of changing plans "on-the-fly", cutting corners and otherwise putting*

profit before necessary steps to protect human health and the environment."

Mr. Thompson does not recall making this statement about KEMRON's performance at Ft. Sheridan. Mr. Thompson does acknowledge that he expressed concern to the Army on many occasions about its decisions to approve design changes at Landfills 6 & 7 without requesting prior approval from Illinois EPA or U.S. EPA. Again, this was not criticism directed at KEMRON because it was merely taking direction from the Army.

4. *"KEMRON became especially concerned when he posted a very one-sided, negative, sarcastic and out-of-date commentary relating to KEMRON's performance on the official EPA Region 5 website, a copy of which can be provided upon request. At a 2003 BCT meeting, KEMRON politely asked him to remove the inflammatory statements from the EPA website. In retrospect, at that time, KEMRON should have brought the situation to the attention of EPA upper management."*

It was never necessary for KEMRON to bring this situation to EPA upper management's attention. When informed of the problem, Mr. Thompson briefed his management about the problem and the information was deleted. If we made a mistake, I believe it was resolved promptly and responsibly.

I believe Mr. Thompson acted responsibly after KEMRON notified him of the problem. He had the site taken down within 24 hours, and changed the copy again within a week due in response to additional input from KEMRON. As a result of KEMRON's comments, the website format for all Region 5 BRAC sites was changed. In regard to the concern about the original BRAC Report being one-sided, his comments to the Army were appropriate given the information and context of the time. The Report was vetted by Region 5 and Headquarters management prior to transmittal to the Pentagon. There are established procedures between DoD and EPA for resolving any disputes in BRAC Reports, and we have no record of the Army questioning or disputing anything that was said in this particular report.

5. *"On January 20, 2004, Region 5 refused delivery of a Ft. Sheridan document from Federal Express. Subsequently the Army and KEMRON received a written request from the Region to have Mr. Thompson's name removed from the mailing list for all Ft. Sheridan documents, and this request was honored"*

An October 21, 2003 letter from William E. Muno, my predecessor, to Army Forces Command stated that due to discontinuance of BRAC funding, U.S. EPA would no longer be participating in the BCT at Ft. Sheridan. Mr. Thompson stated that he was just being sensitive to the high cost of reproducing reports, and thought perhaps you could use the extra copy because we would just have to throw it out. If refusal of the document was interpreted by KEMRON as some sort of a slight, Mr. Thompson assures me that was not his intention. He stated that he will not refuse delivery of any more Ft. Sheridan documents.

6. *"Since Mr. Thompson has not been directly involved with the project for such a significant time period, KEMRON was especially concerned to learn from a representative at the Army Environmental Center, that Mr. Thompson was speaking negatively about the project to other Department of Defense Representatives...During that meeting, Mr. Thompson expressed his displeasure with this form of contracting and cited Ft. Sheridan and by implication, KEMRON, as a key example. Specifically, Mr. Thompson stated that the contractor (inferring KEMRON) had: 1) cut corners, 2) that because of the nature*

of the contract, we were allowed to proceed without regard to process, procedure or regulation, and 3) would agree to do one thing but would do something else. "

Mr. Thompson recalls using Ft. Sheridan as an example of lessons learned about Army oversight and the benefits of carefully defining cleanup objectives up front. U.S. EPA's position on this is very clear and on the record. Mr. Thompson denies that he used the inflammatory language that you have attributed to him, or that he blamed KEMRON for any specific problems at Ft. Sheridan, inferred or otherwise.

The AFRPA meeting was called and chaired by Dan Mooney, a BRAC Program Manager with the Air Force Center for Environmental Excellence (AFCEE) Headquarters at Brooks AFB, TX. AFCEE is the contracting service center for AFRPA's Ohio BRAC sites, and Mr. Mooney is the federal Work Assignment Manager (WAM) for the new Performance Based Contract (PBC). Mr. Mooney invited the primary stakeholders for Rickenbacker and Newark to the Columbus meeting to discuss a draft Statement of Objectives (SOO) for the contract. After receiving your letter, we called Mr. Mooney to discuss what happened that day. I hope you can take some comfort in the fact that Mr. Mooney's interpretation of events is closer to Mr. Thompson's recollection than the story you got from AEC. He told us that he remembers discussing Ft. Sheridan in terms of problems resulting from having the BEC at a geographic distance, and ambiguity in defining regulatory closure. He does not remember Mr. Thompson being critical of the contractor.

Regarding your assertion about Mr. Thompson stating that KEMRON was not doing what they said they were going to do, Mr. Thompson thinks that perhaps he might have made mention of the dispute with the Illinois EPA about statements made in a public meeting about the Proposed Plan for Landfill 1. The point being made was that the Army was not present at the public meeting and this eventually caused communication problems and a big dispute later. Mr. Thompson claims that he did not blame this on KEMRON, as it is an Army responsibility that whatever gets presented is correct.

7. *"Given the latest statements made by Mr. Thompson to Department of Defense personnel holding up the site contractor's work as a negative example of this type of contract, performance and protection, we can no longer ignore the criticisms being openly voiced at our expense."*

Mr. Thompson denies that he is using KEMRON as a negative example of performance based contracting. U.S. EPA's concerns have been limited to how the Army oversees and structures this kind of contract, and we hope that other branches of DoD can avoid similar problems by making the necessary adjustments.

8. *"Being smart, creative and cost-effective is not at all equivalent to cutting corners or violating statute or regulation. If however, an innovative approach to site closure results in an accelerated schedule and lower costs, KEMRON does indeed profit, as we should, and industry costs for obtaining site closure are driven down."*

No one at U.S. EPA has accused KEMRON of cutting corners or violating the law. It has been argued, however, that the Army has "cut corners" by 1) Cutting "unnecessary layers" of oversight previously provided by an onsite Army BEC and/or Corps of

Engineers, and 2) rejected as criteria for regulatory closure U.S. EPA objectives (address air emission risks that might drive its NPL status) or Navy cleanup objectives (to get the property ready for transfer e.g., FOST and OPS concurrence). Our last written position on these unresolved regulatory closure issues was presented in a letter to the Army on September 25, 2003.

U.S. EPA Region 5 does not have a negative predisposition to Performance-Based Contracting (PBC). As an example, one of the most successful cleanup projects in the Region is at the Fernald, Ohio site. This is a huge project, with an award-fee alone that is larger than the AEC's entire FY 2004 PBC environmental cleanup budget. Things have gone smoothly at Fernald because the Department of Energy provides vigorous staff oversight of its contracts, and cleanup objectives are transparent and clearly understood by all stakeholders.

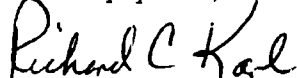
In response to your request, I have investigated this matter internally. After careful consideration, I see no need to retract statements allegedly made by U.S. EPA. I also see no reason to have a meeting unless the Army and Naval Training Station Great Lakes both think it's necessary.

U.S. EPA will be contacting DoD by separate correspondence to initiate discussion of better ways to respond to its requests for comment on PBC scoping.

Thank you for bringing this matter to my attention. I trust this letter is responsive to your concerns. Your letter is indeed accepted in the spirit of cooperation for performance-based contracting in the future.

If you have any remaining questions, please contact Mr. Gary Schafer, Chief of the Federal Facilities Response Section at 312 353-8827.

Sincerely yours,



Richard C. Karl, Director
Superfund Division

cc (w/copy of incoming):

Victor Bonilla, Ft. Sheridan BEC, FORSCOM Atlanta Field Office
Glynn Ryan, FORSCOM Atlanta Field Office
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Sharon Green, U.S. EPA Region 5, MC-10J
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